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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

GIGA WATT, Inc., a Washington
corporation,

Debtor.

Case No. 18-03197

The Honorable Frederick P. Corbit

Chapter 7

MARK D. WALDRON, as Chapter 7
Trustee,

Adv. Case No. 21-_____

Plaintiff,

**VERIFIED COMPLAINT FOR
INJUNCTIVE RELIEF**

vs.

REDACTED

JUN DAM, a California resident, on
behalf of himself and a purported
class of similarly situated parties,

Defendant.

Mark D. Waldron, in his capacity as the chapter 7 trustee (“Trustee”) in the
above-captioned bankruptcy case and as plaintiff in the above-captioned adversary
proceeding hereby alleges, upon his own knowledge or upon information and
belief, as follows:

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1 to Giga Watt Pte. Ltd. (“Giga Watt Singapore”), a Singapore corporation, with
2 respect to the Giga Watt Initial Coin Offering, (the “GW ICO”), which ran from
3 on or about May 19, 2017 to on or about July 31, 2017. Based upon statements by
4 Katrina Arden, David Carlson and Andrey Kuzenny, Perkins also represented
5 Giga Watt with respect to the GW ICO. Other Perkins partners, including J. Dax
6 Hansen, may have also advised.

7 9. Cryptonomos structured and marketed the GW ICO, with legal
8 advice from Ms. Arden and Perkins.

9 10. Giga Watt Singapore issued the WTT tokens (also referred to herein
10 as “WTT”) and sold miners to the WTT holders.

11 11. Giga Watt built and operated the cryptomining facilities. The GW
12 ICO marketed among other things, Giga Watt’s experience, low power rates, and
13 technological advantages, such as “proprietary” Giga Pods.

14 **GW ICO CASH FLOWS**

15 12. Cryptonomos collected the WTT token sales proceeds, both
16 cryptocurrency and fiat currency.

17 13. Cryptonomos transferred cryptocurrency WTT sale proceeds to
18 Circle Internet Finance (“Circle”). Circle converted the cryptocurrency WTT sale
19 proceeds to fiat currency and transferred the converted funds to Perkins.
20 Cryptonomos transferred fiat WTT sale proceeds directly to Perkins.

21 14. WTT purchasers also deposited cash directly into Perkins’ escrow
22 account. Some WTT purchasers also paid Giga Watt Singapore instead of
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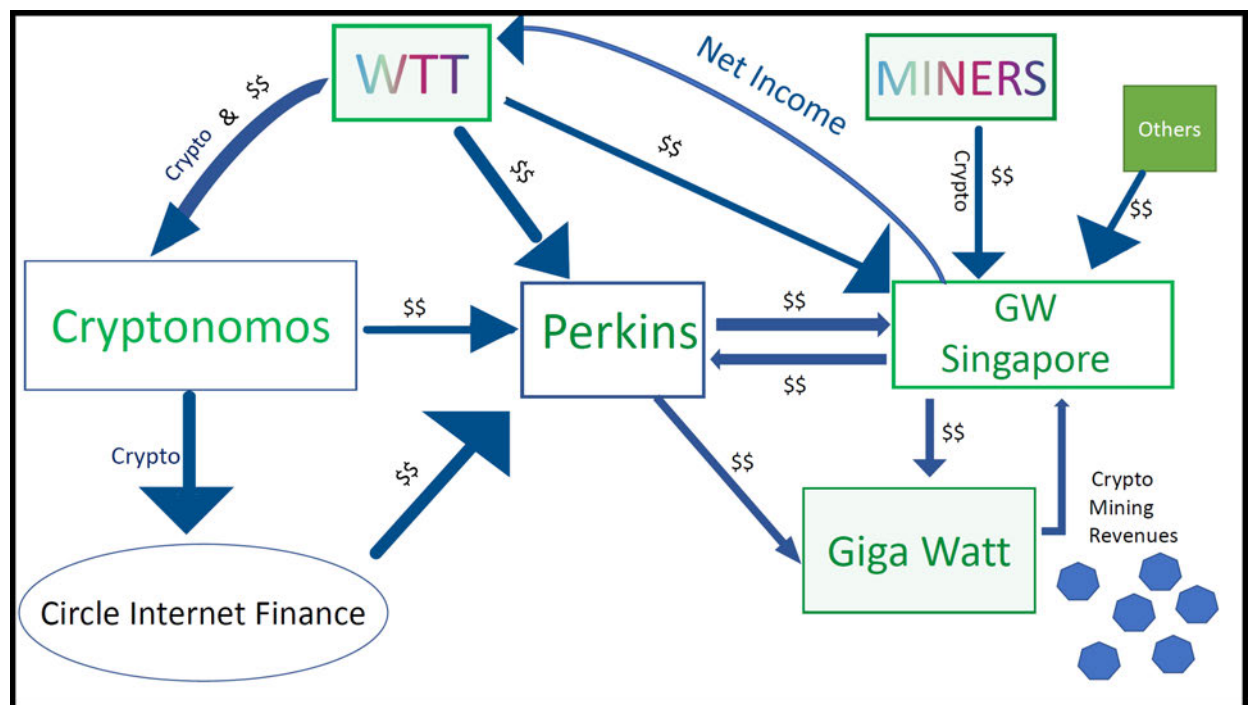
1 Cryptonomos. Giga Watt Singapore transferred all or some of these funds to
2 Perkins.

3 15. Giga Watt Singapore collected all miner sale proceeds.

4 16. Giga Watt Singapore commingled the WTT sales proceeds that it
5 received from Perkins, which it treated as earned, with miner sales proceeds and
6 other funds before sending any funds to Giga Watt.

7 17. Revenues generated by Giga Watt's operations went directly to Giga
8 Watt Singapore which then made distributions of net income (however calculated)
9 to WTT holders.

10 18. The foregoing is a chart of the GW ICO cash flows:



1 **REQUESTED RELIEF AND THE BASES THEREFOR**

2 19. The Trustee has commenced this adversary proceeding in accordance
3 with Bankruptcy Rule 7001 and Federal Rule of Civil Procedure 65 applicable
4 hereto pursuant to Bankruptcy Rule 7065.

5 20. The statutory basis for the relief requested herein is section 105(a) of
6 the Bankruptcy Code. 11 U.S.C. § 105.

7 21. This adversary proceedings seeks to enjoin the Class Action as it
8 threatens the integrity of this bankruptcy case and its estate.

9 **BACKGROUND**

10 22. On November 19, 2020, the Trustee commenced an adversary
11 proceeding (the “Bankruptcy Proceeding”) in this Court against four defendants:
12 Perkins Coie LLP and Lowell Ness, a partner in the Perkins law firm (collectively,
13 “Perkins”), Giga Watt Singapore and Andrey Kuzenny, Adv. No. 20-80031, ECF
14 No. 6.

15 23. On December 16, 2020, a second lawsuit was filed by Jun Dam, as
16 the nominal plaintiff, in the District Court against defendants Perkins and Perkins’
17 affiliates, United States District Court, Eastern District of Washington, Case
18 Number 20-cv-00464-SAB (“the Class Complaint”).

19 24. Both lawsuits are based on the same core factual allegations that (i)
20 Perkins agreed to hold millions of dollars in escrow until Giga Watt met certain
21 construction milestones, but Perkins released the money prematurely, and (ii)
22 Perkins’ premature release of the escrowed funds caused significant damages.

1 25. On September 27, 2021, this Court held that the first three claims in
2 the Class Complaint were barred by the automatic stay. The Court further held
3 that the last two claims in the Class Complaint were not barred by the automatic
4 stay. (Memorandum Opinion at 21, ECF No. 921) However, they could be
5 enjoined pursuant to 11 U.S.C. § 105. By this Complaint, the Trustee seeks the
6 foregoing injunction.

7 26. Both cases allege that the Giga Watt Project advertised the reputation
8 of Perkins to assure WTT purchasers that their WTT would be backed by power
9 or they would get their money back.

10 27. The Class alleges that Perkins breached its obligations under the
11 Consumer Protection Act, RCW 19.86 *et seq.*, and the Washington Escrow Agent
12 Registration Act, RCW 18.44 *et seq.*, Class Complaint ¶¶ 59-60 by ignoring the
13 escrow requirement of holding WTT proceeds until Giga Watt had the requisite
14 cryptocurrency mining capacity.

15 28. The Trustee alleges in the Bankruptcy Proceeding that Perkins
16 breached its fiduciary duty to Giga Watt and aided and abetted Giga Watt
17 Singapore's breach of fiduciary to Giga Watt, by distributing funds from the
18 escrow whenever Mr. Kuzenny requested, without regard to Giga Watt's
19 cryptocurrency mining capacity.

20 29. The Class Action is closely related to the Bankruptcy Proceeding.
21 Both the Trustee and the Class seek damages from the same defendants, for the
22 same alleged wrongs, and from the same pool of funds – i.e., Perkins.

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1 **COUNT ONE**

2 *(Injunctive Relief, 11 U.S.C. § 105)*

3 30. Plaintiff incorporates by reference all the foregoing paragraphs as if
4 set forth fully herein.

5 31. The continuation of the Class Action will frustrate and jeopardize the
6 Trustee's efforts to successfully prosecute the Bankruptcy Proceeding and
7 liquidate the Debtor's assets.

8 **Balance of Harm**

9 32. The risk of irreparable harm to the estate outweighs the risk of
10 irreparable harm to the Class.

11 33. If the Class Action is not enjoined, the estate will suffer the risk that
12 the Class plaintiffs – many (if not all) of whom have filed claims in the
13 bankruptcy case – could have their claims adjudicated outside the Bankruptcy
14 Court and thereby “jump the line” of the bankruptcy creditors.

15 34. In contrast, enjoining the Class Action would require Mr. Dam to
16 wait to collect his claims, like all other Giga Watt creditors. And, in the unlikely
17 event of a settlement, Mr. Dam will have the right to be heard pursuant to Rule
18 9019 of the Federal Rules of Bankruptcy Procedure.

19 35. In addition, unlike the Class Action, which threatens to siphon funds
20 away from the estate, any recovery by the Trustee will be distributed to all
21 creditors according to the Bankruptcy Code, including Mr. Dam, if his claim is
22 allowed.

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1 **Likelihood of Success**

2 36. The Trustee's efforts in the Bankruptcy Proceeding and in the
3 bankruptcy case have a reasonable likelihood of being successful if the Class
4 Action is enjoined.

5 37. As a preliminary matter, Andrey Kuzenny has invoked his privilege
6 against self-incrimination provided by the Fifth Amendment of the U.S.
7 Constitution. And Giga Watt Singapore has failed to answer the complaint in the
8 Bankruptcy Proceeding. Mr. Kuzenny's silence and Giga Watt Singapore's flight
9 give the evidentiary advantage to the Trustee because they raise negative
10 inferences, such as that Giga Watt Singapore intentionally and knowingly
11 withdrew escrow funds from the escrow in violation of the ICO terms, their
12 actions destroyed the Giga Watt Project, and they lied to the United States
13 Securities Exchange Commission ("SEC") to cover up the theft of escrow funds.

14 38. As a further advantage to the Trustee, Mr. Kuzenny's abuse of the
15 escrow and its subsequent cover up trigger the crime-fraud exception to the
16 attorney-client privilege, to the extent any applies, given the evidence that Perkins
17 also represented Giga Watt in the GW ICO.

18 39. The Trustee's case is also strong on the merits and therefore
19 reasonably likely to succeed. Mr. Ness understood the escrow terms and the
20 central role that Perkins and the escrow would play in the GW ICO. For example,
21 Perkins' March 2017 retainer letter with Cryptonomos stated that Perkins would
22 provide "final document review with respect to digital currency style token sales."

1 The GW ICO was a digital currency style token sale with a White Paper that
2 provided for an escrow. As the final document reviewer, Perkins understood the
3 White Paper and the escrow that the White Paper described.

4 40. Perkins served as a credit enhancement mechanism and as a backstop
5 for Giga Watt against liability for construction delays. In addition, the Perkins'
6 escrow was the linchpin of Ms. Arden's securities analysis. She argued that if the
7 WTT token proceeds were held in escrow until Giga Watt built the capacity to
8 back those WTT tokens, then the token could be deemed a "utility token," as
9 opposed to a security. This would mean that no registration of the GW ICO with
10 the SEC was required and that the GW ICO could market to unsophisticated
11 investors, regardless of their means.

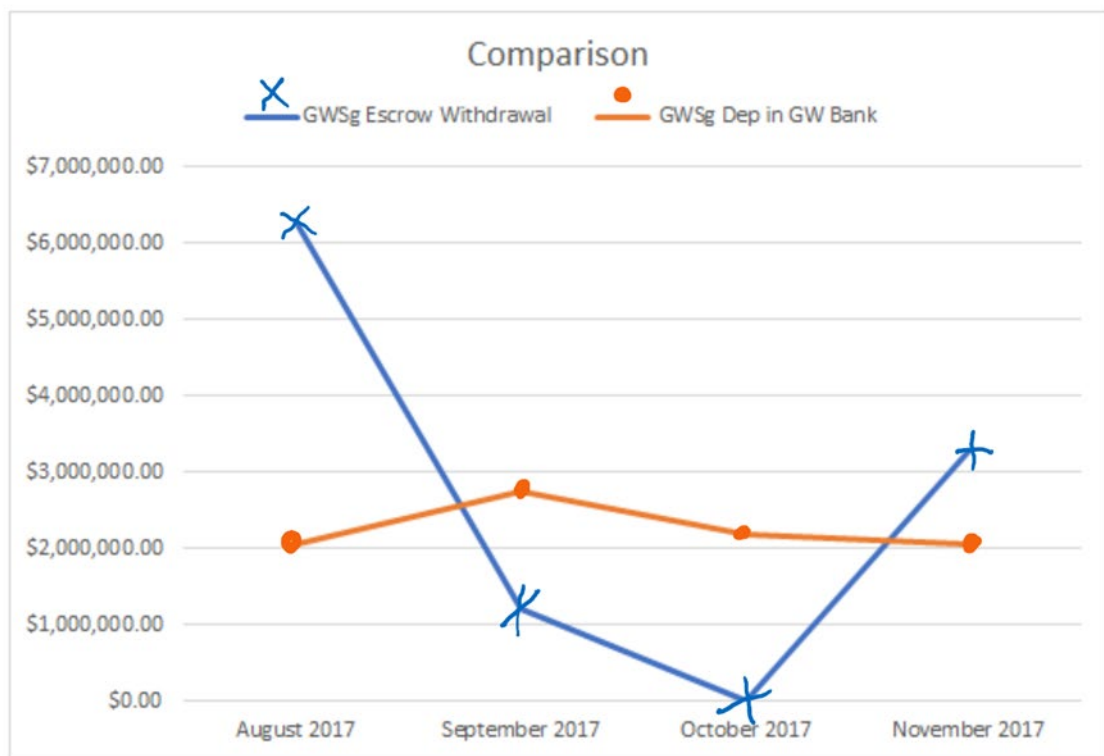
12 41. The key to the utility token theory was that the sales proceeds would
13 only be released when the construction was completed. Perkins' role as escrow
14 holder was to ensure compliance with this regime.

15 42. Perkins denies the allegations and affirmatively defends that its
16 conduct did not damage Giga Watt, because Giga Watt received the escrow
17 proceeds. This defense relies on an August 2, 2018 letter that Wilson Sonsini
18 Goodrich & Rosati ("WSGR") sent to the SEC stating that 100% of the escrow
19 proceeds was spent on construction. However, no evidence supports this assertion
20 and the available evidence contradicts it.

21 43. Ms. Arden told WSGR that no one could account for the use of the
22 escrow proceeds, because Giga Watt Singapore had commingled the escrow
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1 proceeds with its other funds. To the Trustee's knowledge, no one has produced
2 an accounting or traced the escrow proceeds.

3 44. Further, after reviewing Giga Watt's bank records and the escrow
4 accounting provided to the Trustee by both WSGR and Perkins, the Trustee has
5 found no correlation between Giga Watt Singapore's escrow withdrawals and its
6 deposits to Giga Watt. Giga Watt Singapore paid Giga Watt between \$2 and \$3
7 million a month, no matter how much Giga Watt Singapore withdrew from the
8 Escrow, as shown by the following chart:



45. Giga Watt did not even keep all the proceeds that Perkins distributed directly to Giga Watt, as set forth below:

When	Escrow Transfers to Giga Watt	GW Bank Withdrawals (Not Ordinary)	Giga Watt Bank	Bank Records' Transfer Description
12/19/2017	\$ 2,000,000.00		Numerica Credit Union	Incoming Wire
12/26/2017	\$ 4,500,000.00		Umpqua Bank	Incoming Wire
12/26/2017		\$ (294,000.00)	Umpqua Bank	INTL Wire Xfer Debit Business Singtrade Kr Pte Ltd Overseas Chinese Banking Corp Payment Under Gw Sgl
1/8/2018		\$ (3,450,340.00)	Umpqua Bank	OTC Withdrawal
1/17/2018		\$ (953,320.00)	Bank of America	BNF:SILVER MILLER FBO STORMSME SETTLEMENT AGREEMENT DD 01.15.20
1/19/2018		\$ (47,250.00)	Bank of America	BNF:GIGWATT PTE. LTD BNF BK:E UROSTANDARD BK 60 LOAN AGREEMENT
2/9/2018	\$ 1,148,057.58		Bank of America	Incoming Wire
2/22/2018	\$ 3,217,699.73		Bank of America	Incoming Wire
	\$10,865,757.31	\$ (4,744,910.00)		
		\$ 2,258,078.00		Deposits partially reimbursing the \$3,450,340 withdrawal.
	\$ (2,486,832.00)	\$ (2,486,832.00)		
	\$ 8,378,925.31			

1 46. Out of the second distribution to Giga Watt in the amount of \$4.5
2 million, \$2,486,832 was transferred to Giga Watt Singapore, Singtrade KR Pte
3 Ltd. (whose claim in the bankruptcy case is now owned by Mr. Kuzenny), and
4 unknown party(ies).

5 47. Giga Watt also paid the \$953,319.55 settlement payment to
6 StormsMedia LLC on behalf of itself and Giga Watt Singapore, out of this second
7 payment.

8 48. Perkins provided Giga Watt no access or information about the
9 escrow. Mr. Carlson informed WSGR that Giga Watt had no documents or
10 information regarding the escrow or WTT Token releases. When informed that
11 Giga Watt and Mr. Carlson could not provide the information and that all the
12 documents were with Cryptonomos, Mr. Kuzenny stepped forward without protest
13 or disagreement. He and Ms. Arden – not Mr. Carlson – answered the questions
14 regarding the use and release of escrow proceeds.

15 49. Mr. Carlson, the CEO of Giga Watt, was kept in the dark regarding
16 the escrow, its receipts, and its distributions.

17 50. Based on the foregoing, it is reasonably likely that the Trustee will
18 succeed in the Bankruptcy Proceeding and in the bankruptcy case.

19 **The Public Interest**

20 51. Both the Chelan-Douglas County Port Authority, f/k/a the Port of
21 Douglas County (“the Port”) and the Douglas County Public Utility District (“the
22 DC PUD”), government entities, have asserted claims against the estate arising
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1 from their support of the Giga Watt Project. The Port leased the Pangborn Site to
2 Giga Watt on favorable terms. The DC PUD agreed to provide 30 MW of power
3 to the Pangborn Site at an internationally competitive rate.

4 52. Giga Watt dug a hole spanning approximately 70 feet across and
5 approximately 12 feet down on Port-administered land adjacent to the Pangborn
6 Site without permission. It cost more than \$100,000 to restore the site. Apart from
7 the expense, the hole was a hazard and a nuisance. The foregoing is a photograph
8 provided by Mr. Carlson to WSGR of the Pangborn site with the hole:



17 53. The DC PUD asserts it is owed more than \$300,000 for work and
18 materials in constructing poles and transmission lines pursuant to its 30 MW
19 power contract with Giga Watt. Furthermore, Mr. Kuzenny has blamed the DC
20 PUD - rather than his misappropriations from the escrow - for destroying Giga
21 Watt. Mr. Kuzenny has not produced evidence to support this assertion. The
22 Trustee's special litigation counsel reviewed tens of thousands of pages of

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1 documents produced by the DC PUD regarding this assertion. The Trustee has not
2 found support for Mr. Kuzenny's allegation.

3 54. Enjoining the Class Action will maximize the potential distribution to
4 all creditors, including these public entities. Thus, an injunction would further the
5 public interest.

6 55. In addition, the Bankruptcy Proceeding promotes the public interest
7 by exposing attorney dishonesty. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 56. Further, [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]
21 [REDACTED]

22 [REDACTED]
23 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 57. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 58. Attorneys enabling Russian cryptocurrency fraudsters is a matter
9 of public interest.

10 **SECURITY WAIVER**

11 59. The Trustee is not required to post any security, pursuant to Rule
12 7065 of the Federal Rules of Bankruptcy Procedure.

13 **PRAYER**

14 Wherefore, Plaintiff prays for the equitable relief and judgment as follows:

15 1. Entry of an order pursuant to section 105(a) of the Bankruptcy Code
16 enjoining Mr. Jun Dam, his attorneys, and all other persons who are in active
17 concert or participation with Jun Dam and his attorneys from litigating or
18 arbitrating, in any way or in any forum, the Class Action or any claims arising

19 *[This Complaint continues on the following page.]*
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1 from or related to the Class Action until such time as the Bankruptcy Proceeding
2 is adjudicated or otherwise resolved on a final, nonappealable basis.

3 2. Such other and further relief as the Court deems just and proper.

4 Dated: October 29, 2021

POTOMAC LAW GROUP PLLC

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6 By: /s/ Pamela M. Egan
Pamela M. Egan (WSBA No. 54736)
7 *Attorneys for Mark D. Waldron, Chapter 7*
Trustee, Plaintiff
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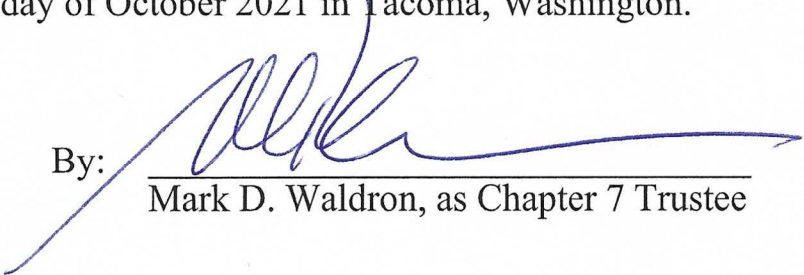
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VERIFICATION

I, Mark D. Waldron, the Chapter 7 Trustee in the above-captioned case, having been duly sworn, hereby declare that I have read the attached Complaint. I am fully familiar with the facts set forth herein and they are true and correct to the best of my information and belief.

Executed on this 29th day of October 2021 in Tacoma, Washington.

By:


Mark D. Waldron, as Chapter 7 Trustee

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